Supreme Court, U.S.
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In the

Supreme Court of the United States

October term, 1998

ABDUL AZIZ,

Petitioner,

v.

UNIVERSITY OF AKRON

Respondent.

On the petition for a writ of certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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41 pp

QUESTIONS PRESENTED

(1) Whether the 1973 McDonnell Douglas v. Green three-step procedure is required, appicable and lawful to adjudicate a summary judgment motion by a defendant, in its favor.

AND

(2) Whether the courts possess, should possess, or are required to posses necessary expertise to evaluate the qualification of engineering applicants for engineering positions.

AND

(3a) Whether it is within the power and jurisdiction of a district court to adjudicate, without a t r i a l, when two candidates are engineering applicants.

OR

(3b) Whether engineering qualifications are, or should be, precluded pursuant to FEDERAL RULES OF CIVIL PROCEDURE 56 (c).

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1. Quotation 1: 1993 Supreme Court Opinion to prove discrimination. (1,23). (4,8). (5,10). (5,11). (6,12). (7, 1). (9,3). (11A, 5). (15,3). (15,13). (17,8) (22,16).

2. Quotation 2: Supreme Court Opinion on Rule 56 (c). (5,10) (5,14) (5,24) (9,10). {9,17) (11,7) (13,1). (14,12) (16,24) (21,19).

3. Quotation 3: 1973 McDonnell Douglas v. Green three-step burden shifting method. (4,17). (4,20). (4,20). (4,22). (7,1). (7,2). (7,20). (7,23). (7,26). (8,2). (8,5). (8,8). (12,9). (10,10) (10,22) (10,27) (13,11). (14, 2).. (15,2). (15,4). (15,16). (15,16). (15,18). (16,8). (16,10). (16,12). (16,16). (17, 6). (17,10). (19,19). (19,21). (21,1). (22,14). (22,16). (22,22).

4. Quotation 4: Supreme Court Opinion, Conley v. Gibson 355 U.S. 41 (1957). (5,10). (5,14). (9,10). (14,12). (21,19).

5. ADEA of 1967 as amended. (9,27). (11, 26). (16,20).

6. Title VII of Civil Rights Act of 1964 as amended. (9, 27). (11A, 26). (16,20).

7. Federal Rules of Civil Procedure 56 (c). (5,10). (9,10). (14,11). (20,4). (20,16).

8. Webster's II New Riverside Dictionary. (10,3).

9. Black's Law Dictionary. (10,14)

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1998

ABDUL AZIZ, Ph.D.,

Petitioner,

v.

UNIVERSITY OF AKRON

Respondent.

I. PETITION FOR WRIT OF CERTIORARI

Petitioner, Abdul Aziz, Ph.D., a citizen of the United States of America does, hereby, petition this court to grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

A. OPINIONS BELOW:

None published.

B. JURISDICTION:

1. The date of final judgment to be reviewed was entered on March 12, 1999, exh.__1__.

2. Jurisdiction is conferred upon the Supreme Court by Rule 10 (c), which says, "a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this court," **and** "has decided an imortant federal question in a way that conflicts with relevant decision of this court.

II. BACKGROUND

In response to an advertisement for a faculty position by the respondent, the petitioner applied. But he was not hired. Exhausting administrative remedies, petitioner filed a suit in the federal district court which dismissed the case, exh.__2__. Petitioner appealed to the appeals court which affirmed the district court judgment, exh._1_. Both courts adjudicated the complaint by the application of the three-part burden shifting method, first established in 1973 in McDonnell Douglas Corp., v. Green., more commonly known as the McDonnell Douglas Framework. **The plaintiff's case was not dismissed by a trial.**

III. ARGUMENTS

Plaintiff asserts that

1. **The McDonnell Douglas Framework is not required in Summary Judgment Adjudication.**

2. **The McDonnell Douglas Framework is not applicable in Summary Judgment Adjudication.**

3. **The McDonnell Douglas Framework is not lawful in Summary Judgment Adjudication.**

The above three assertions are being established with the help of the following authorities:

AUTHORITIES

Quotation 1

1993 Supreme Court Opinion to prove Discrimination.

There are two methods by which a plaintiff can attempt to

prove potential discrimination. First, plaintiff may present direct evidence of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence. *St. Mary's Honor Ctr. v. Hicks* 509 U.S. 502, 506-12, 113 S. Ct. 2742 (1973).

Quotation 2

Supreme Court Opinion on FRCP 56 (c)

The plain language of Rule 56(c) mandates the entry of summary judgement, after adequate time for discovery and upon motion, against a party who fails to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact'.

Quotation 3

1973 McDonnell Douglas v. Green three-part burden shifting Method.

Discriminatory treatment is proven according to the three-part burden shifting method, first established in 1973 for McDonnell Douglas Corp., v. Green. Under McDonnell Douglas Framework a plaintiff must prove by preponderance of evidence a prima facie case.. If he does so, burden of proof shifts to the employer to articulate a legitimate decision nondiscriminatory reason for its employment If the employer carries his burden, plaintiff must show that employer's proffered reason was merely a pretext for discrimination.

Quotation 4

The Supreme Court Opinion, Conley v. Gibson 355 U.S. 41 (1957).

In appraising the sufficiency of a complaint, we follow, of course, the accepted rule that a complaint should not be

> dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

ON SUMMARY JUDGMENT ADJUDICATION

Theorem I.
The McDonnell Douglas Framework is not required in Summary Judgment Adjudication

1. **The 1993 Supreme Court opinion, Quotation 1 says,**

> There are two methods by which a plaintiff can attempt to prove potential discrimination. First, plaintiff may present direct evidence of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence.

2. Since the 1993 Supreme Court opinion is the latest and since it gives two alternatives, the 1973 McDonnell Douglas Framework is not required by a plaintiff *who* elects to use the first alternative. And it is not mandatory upon any plaintiff. And no plaintiff can be forced in to using it. So, Quotation 3 is eliminated as a tool for summary judgment adjudication.

Thus, the McDonnell Douglas Framework is not required in Summary Judgment Adjudication.

Theorem II
The McDonnell Douglas Framework is not applicable in Summary Judgment Adjudication.

1. Adjudication of a discrimination complaint consists of two parts:

(i). **Summary Judgment Adjudication, SJA.**
(ii). **Discrimination Complaint Adjudication, DCA.**

Tools for Summary Judgment Adjudication, SJA.

1. The purpose of **SJA**[1] is to weed out frivolous complaints, for judicial economy, and to protect a defendant from unnecessary harrasments. Tools[2] for summary judgment adjudication, SJA, are: Rule 56 (c), Quotations 1, 2, and 4. When a plaintiff elects to use the first alternative of Quotation 1, then the second alternative is eliminated.

2. As a result, Quotation 1 is eliminated from its use as a tool for SJA, leaving behind only Rule 56(c) and Quotations 2 & 4. Thus, finally, tools for summary judgment adjudication, SJA, reduce to 3. (These three tools are necessary and sufficient for summary judgment adjudication. As a matter of fact **Quotation 2 alone is strong enough for summary judgment adjudication.** The defendant did not use it.)

Tools for Discrimination Complaint Adjudication, DCA.

1. The Discrimination Complaint Adjudication, **DCA**, begins after the summary judgment ends. The purpose of DCA is to adjudicate whether the plaintiff was unlawfully discriminated

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[1] to be read as summary judgment adjudication

[2] Tools are standards. In case of summary judgment, they are summary judgment standards.

against by the defendant. Tools for doing so are:(a) the advertisement of the position, (b) applicants' applications, (c) resumes, (d) transcripts, and (e) letters of recommendation, if any, for an example, see **exh.__3__.**

The tool (a) shows that the position was advertised.
The tool (b) shows the applicant applied.

The tools (c) (d) will show, **at trial,** who was better qualified of the two, plaintiff or selectee.

The tools (c)(d)(e) show that the petitioner falls under the protected group by virtue of his age, race and national origin..

Proof of Theorem II

1. **1993 Supreme court opinion, Quotation 1,** was intended for, as it says "to prove potential discrimination," vide line 2 of the quotation. Webster's II New Riverside Dictionary defines the word potential as:
(i). "Latent", (ii). "Capable of being developed"

2. Thus, when a court uses the 1993 Supreme Court opinion, it is adjudicating the following:

(i) the latent discrimination,
(ii) which could develop in to a discrimination or
(iii) if there exists a discrimination.

In simple language: That is to say it is adjudicating a discrimination complaint or, it is **the** discrimination complaint adjudication. So, the 1993 Supreme Court opinion is not applicable for SJA.

The same observation holds true for 1973 McDonnell Douglas Framework, it is too adjudicating the entire discrimination complaint, beginning to the end because,

> Under McDonnell Douglas Framework a plaintiff must prove by preponderance of evidence a prima facie case. If he does so, burden of proof shifts to the employer to articulate a legitimate nondiscriminatory reason for its employment decision. If the employer carries his burden, plaintiff must show that employer's proffered reason was merely a pretext for discrimination.

4. Clearly, it is seen that the above passage performs the entire Discrimination Complaint Adjudication, DCA from beginning to the end. Therefore, McDonnell Douglas Framework is not applicable in summary judgment adjudication.

Theorem III.
The McDonnell Douglas Framework also is not lawful in Summary Judgment Adjudication.

1. Under the 1973 McDonnell Douglas Framework, a plaintiff is to show pretexts to defendant's proffered reasons. If he/she fails, his/her case is dismissed **summarily**. From this observation one is led to believe that the 1973 McDonnell Douglas Framework was designed for Summary Judgment Adjudication, SJA, and not for the entire Discrimination Complaint Adjudication, DCA.

2. But since its inception in 1973 the courts are using the McDonnell Douglas Framework to dismiss the entire discri-

ation complaints. From this observation one is led to believe otherwise that the 1973 McDonnell Douglas Method was designed for the entire Discrimination Complaint. Adjudication, DCA.

3. If we believe that McDonnell Douglas Framework was designed for **SJA,** then since the courts are using it for **DCA,** they are unlawfully acting. **And, therefore, McDonnell Douglas Framework is unlawful.**

ON THE OTHER HAND

4. If we believe that the McDonnell Douglas Framework has been designed for **DCA,** then the courts are again unlawfully acting, because they are using it for SJA. **And, therefore, McDonnell Douglas Framework is unlawful under either belief.**

Direct Evidence v. Circumstantial Evidence

1. As mentioned earlier in section under **"Tools for Discrimination Complaint Adjudication"** on page __5__ direct evidence of discrimination are the documents, (a) advertisements, (b) applicants' applications, (c) resumes, (d) transcripts and (e) letters of recommendations, if any. These are documents,[3] **by which and only by which** an employer makes its decision to hire an applicant. **Nothing else is a direct evidence.** The direct evidence, "Advertisements",

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[3] vide exh.__3__.

originate from the employer. Other direct evidence come from the plaintiff and selectee.

2. **The Supreme Court opinion, Quotation 1** refers to direct evidence and circumstantial evidence. In the paragraph 1 above I have
named the direct evidence, explained why only they are the direct evidence.

3. The honorable courts have evaluated the qualifications of the candidates. But qualifications do not enter in the adjudication of summary judgment. The tools of the SJA as identified earlier are Rule 56(c), and Quotations 2 and 4. They are the summary judgment standards. None of these standards include the evaluation of qualifications of candidates in the SJA.

4. **SJA is a pretrial operation of law and DCA is an at trial operation of law**. That DCA is an at trial operation of law has been made very clear in the Supreme Court opinion in Quotation 2. But the defendant and the courts have used the tools of DCA for SJA. Thus, they have used wrong tools, i.e.., wrong standards.

Discrimination v. Pretext

Unlawful discrimination may be defined with the help of an example as, "A is better qualified than B. A belongs to the protected group by virtue of hi/her age, race and national origin. The employer hires B. Then A is said to be unlawfully discriminated against by the employer." This argument is based on ADEA of 1967 or Title VII of Civil Rights Act of 1964. Pretext has no such legal definition or basis.

PRETEXT AS USED HERE MAY BE ARGUED AS AN INTRINSIC FRAUD

1. **Fraud: Webster's II New Riverside Dictionary defines fraud as** "a deliberate deception perpetrated for unlawful or unfair gain, if the rules of the game are changed such that who changed the rules wins, that is an unfair gain, it is a common law. a trick, swindle, cheat."

2. The defendant and the courts have changed the rules of the game. They have changed the word **discrimination** to **pretext** in the McDonnell Douglas Method. The have done so because proof of **discrimination** is amenable to discrimination laws, but there are no such laws for proof of **pretext.**

3. **Fraud: Black's Law Dictionary defines pretext as** "an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right."

4. **McDonnell Douglas Method induces** a plaintiff to use its three-steps to defeat a summary judgment motion by a defendant. So a **pretext** is an intentional perversion of truth; **intentional** because a defendant always wants to win its case. **Perversion** is from **discrimination** to **pretext.** Discrimination is **truth** and pretext is **falsehood.**

5. Use of the McDonnell Douglas Method induces a plaintiff who is a minority to part with and surrender his/her right to have a trial to decide his/her **discrimination** complaint.

BIAS

1. **Bias is a natural phenomenon which may be called affinity of one kind for its own kind.** For example, Indians have affinity for Indians. Europeans have affinity for Europeans. Bias is present both in humans and in animals. In this case I was subjected to bias by the district court judge, Hon. Economus, a relatively young person.

2. I requested the hon. district court to conduct the scheduling hearing conference by telephone. The judge denied. It cost me about $500.00 for my trip to Youngstown, Ohio.

3. When I entered the judge's chamber, there were about 5 people already in. Before sitting on the chair, Hon. Judge Economus asked me, "Are you a lawyer ? What do you know about law ? How would you conduct the case ?" The judge did not expect an answer from me. Any way, I answered, "I am a plaintiff pro se." Then he began to ask me and tell me without expecting any answer. "There are 56 applicants, could the employer hire all of them ?". . . "You will lose the case."....
"You withdraw the case." etc. Very soon I realized that I was being intimidated. I did not yield. The judge filled the schedule forms discussing with the defense counsel, Ms. Pierce-Geally. He did not ask me any single question.

4. The judge adjourned the court and was standing up from the Chair, when I said, "May I ask the honorable court if discrimination still exist ?" He took a little time, faced me and said, "I am not going to answer this question." I had the courage to ask this question because by this time I had the clear signal that this court was going to dismiss the case, and

he called me to the hearing only to frighten me to withdraw .

5. We, the minority, view such behavior of the court as Bias. I returned home and requested the clerk to send me a transcript of the proceedings. I was told that there was no proceeding transcribed in this case.

SUMMARY

1. None of the Quotations 1 and 3 were made for the Summary Judgment Adjudication, therefore their use for the Summary Judgment Adjudication is not lawful. Quotations 2 and 4 were made for Summary Judgment Adjudication, but the defendant and the honorable courts did not use them.

2. **The defendant and the courts did not show that plaintiff failed** "to make sufficient showing to establish the existence of an element essential to his case and on which he will bear the burden of proof at trial."

3. **The defendant and the courts did not show that** "it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

4. I had three simple allegations which I composed to comply with the laws directly. They are:

(i). A less qualified person was hired.

(ii). Since a less qualified person was hired, I was discriminated against by the common law dictionary definition of discrimination, vide Webster's II New Riverside Dictionary.
(iii) Since I was discriminated against and since I belong to the protected group by virtue of my age, race and national

I was unlawfully discriminated against. The applicable laws are: ADEA of 1967 and Title VII of the Civil Rights Act of 1964.

5. All of the three allegations above are elements essential to my case at trial. The respondent did not prove otherwise and the courts did not show otherwise.

Final Evaluation of District Court Judgment and Appeals Court Affirmance

1. It has been mentioned in the beginning that the above courts have dismissed the case by the application of the 1973 McDonnell Douglas Framework. And it has been proven in three theorems that McDonnell Douglas Framework is not required, is not applicable and is not lawful. **On the basis of this proof I have pleaded that the summary judgment was not appropriate.**

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2 **I repeat** that the work done by the honorable courts to arrive at a decision did not come under the jurisdiction of **Summary Judgment Adjudication,** but came under **jurisdiction of Discrimination Complaint Adjudication,** because the defendant and the courts have discussed and evaluated the qualifications of the candidate's, I am not saying that these evaluations are not needed, but I am saying that they are not needed, now, during SJA. We have already established that they are needed at trial.

3. These evaluations use the tools for DCA, but we are in the first part of the discrimination complaint SJA. So, we

must use the tools of SJA now and use the tools of DCA at trial

.

3. In its opinion, Quotation 2, the Supreme Court has made it very clear that the plaintiff bears the burden of their proof at trial. An issue which has played the most import role for the decision of the courts from a practical point of view is that:

4. Courts do not possess, should not possess, and are not required to possess the necessary technical expertise to evaluate the qualifications of two graduate level mechanical engineers. That is the part of the problem. Solutions are suggested later in this petition.

A Fundamental Proof that the McDonnell Douglas Three-Step Procedure is Unlawful also for the Discrimination Complaint Adjudication, DCA

1. In simple language, the law requires that a plaintiff must prove that (i) a less qualified person was hired, (ii) he/she was discriminatedagainst, and (iii) he/she was unlawfully discriminated against.

2. These three steps come from the laws quoted. They bring the question of qualifications, discriminations and unlawful discrimination. So, if a plaintiff can successfully establish the above three steps he/she was unlawfully discriminated against In fact a plaintiff does not need to establish all the steps, but

the only the first step. If he does so, then he wasdiscriminated agaist, because the employer was obligated by law to hire the better of the two candidates.

3. Last step is a matter of law. But the three steps of the McDonnell Douglas Framework do not come from the laws. For this reason and the reason that it contains two "ifs" **the McDonnell Douglas Framework is unlawful. No law may be framed with an "if".**

LET US RECAPITULATE AND REMEMBER THAT

1. A discrimination complaint has two parts and each part has a different purpose and different tools for their adjudication. The first part is Summary Judgment Adjudication, SJA; and the second part is Discrimination Complaint Adjudication, DCA.

2. The tools of the SJA are: Rule 56 (c) and its corollaries, Supreme Cpourt opinions, Quotations 2 and 4. The tools of the DCA are: employer's advertisement, applicants' applications, resumes, transcripts and letters of recommendation. To adjudicate the SJA we must use the SJA tools. But the respondent and the courts have used the tools of the DCA.

3. The respondent and the courts have evaluated the qualifications of the two candidates to adjudicate the SJA. But we must remember that qualification come from resumes and transcripts. Resumes and transcripts are the tools of the DCA and not of the SJA.

4. Let us remember that we shall have chances to use the tools of the DCA after summary judgment at a full trial but

not at a judge trial. The difference between the two is **that in a judge trial there is no cross examination of witnesses whereas in a full trial there is. This makes the difference between the victory and defeat.**

5. We must remember that the respondent and the courts have used the 1973 McDonnell Douglas three-step procedure We must also remember that according to the 1993 Supreme Court opinion the 1973 McDonnell Douglas Framework is not required by a plaintiff *who* elects the first alternative. **Aziz has elected the first alternative.**

So, summary judgment was not appropriate.

IV. COMPELLING REASONS

1. From the list of quotations under authorities we see that a defendant can win by the quotation 3. A plaintiff can win by the quotation 1. So both can win. This is an apparent contradiction.

2. Since quotation 1 is most recent and since it is by the Supreme Court, so, it is the correct one to use.And the incorrect one must be outlawed. This is a compelling reason for the Supreme Court to outlaw the McDonnell Douglas Framework.

3. Three steps to establish discriminatory treatment must not come from the McDonnell Douglas Framework of someone's unfounded imagination, but must come directly from applicable laws enacted by the Congress representing all the

people of America. Such three steps are posed proposed on page _21_ as Step 1, Step 2, and Step 3.

5. Plaintiff bears burden of their proof at trial, for he is the moving party for the complaint. For the summary judgmen. motion, the defendant is the moving party, therefore, it bears the burden of proof that plaintiff has failed "to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial."[4] The defendant did not bear its burden of proof. It did not show[5] that the three steps above on page 21 are not essential to plaintiff's case. Defendant used the three steps of the McDonnell Douglas Framework because it is still available and because it knows that the Supreme Court does not take 99% of the cases. If the McDonnell Douglas Framework was not at hand, no defendant could use it.

5. Therefore to prevent use of McDonnell Douglas Frame work it must be outlawed. Otherwise, discrimination can never be stopped in this great American Society.[6] And our dream for a discrimination-free society will never materialize.

The 1973 McDonnell Douglas Framework has been very harmful.

1. More and more cases are being dismissed by defendants,

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[4] Supreme Court opinion on FRCP 56 (c), Quotation 2.

[5] At Summary Judgment Adjudication.

[6] In his first visit to America,1989, getting down from the airplane in Andrews A.F.B. His Highness Pope Paul II said, "America is the greatest nation in the world militarily and economically, but nowhere near to a great society."

by use of pretexts, because while the term "discrimination" is well defined by Title VII of Civil Rights Act of 1964 and ADEA of 1967. the term "pretext" is not. Even if it were, there is no need to resort to showing of pretext when direct evidence of discrimination can be found in legislation as shown below:

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THE LAWS SAY

1. It is unlawful for an employer to refuse to hire an individual despite his/her qualifications, if that individual belongs to the protected group by virtue of his/her age, color, race, sex, religion and national origin.

2. The 1973 McDonnell Douglas Framework was amended in 1993, but still employers are using it. The only way the employers could be compelled to abide by 1993 amendment is by a Supreme Court Opinion as strong as

"Equal but Separate is not Equal."

Or by totally outlawing the 1973 McDonnell Douglas Framework

3. The American Justice System must not place a load on courts which they cannot bear. In the Holy Tora, the Bible, and the Quoran, the God[7] says that He "does not place any burden upon a man or woman beyond what he/she can bear."

4. This petitioner puts no blame on the courts, because it is a dilemma for the courts, **which only the Supreme Court of the United States** or the Congress can solve.

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[7] The most Beneficient and Merciful

THE COMPELLING REASONS CONTINUED

The compelling reasons, for the Supreme Court to accept the petitioner's writ of certiorari are, as follows:

1. Priority: The petitioner would list the priorities of the United States in the descending order as:

National Security,
Racial Harmony,
Crime,
and Economy.

2. With the USSR divided in to many independent states according to their ethnicity, the U.S. is the only superpower in the world. So, our first priority is gone for ever from its place. The next priority, the racial harmony, will soon come to be known as the Minority Harmony, because of tremendous influx of immigrants coming to the United States from all over the world of various races, nationalities, religions and ethnicities.

3. We must be prepared to deal with the new diversity by offering equal opportunity to all irrespective of age, race, national origin, religion and ethnicities.

4. With first priority of national security gone, Minority Harmony will be our new First Priority. This priority is one compelling reason for the Supreme Court to accept the petitioner's writ of certiorari for a hearing.

5. Slavery was the earliest and most severe form of discri-

mination. The United States was on the verge of getting divided in to North and South. Lincoln came, emancipated the slaves and stopped the country from division at the risk of his life. But the conditions of the slaves did improve very little, Then came a great man, Martin Luther King. Jr., who mobilized the racially Negroid population of the United States in to a nonviolent movement following the ideology of Mahatma[1] Gandhi of India. King was successful in bringing Civil Rights Legislation with the help of President Johnson. But there was little progress. Finding so, the Congress enacted the jury trial for Civil Rights Actions in 1991. But still there was no reasonable progress at all.

6. It is very difficult, if not impossible, to implement and enforce laws by a people on the same people. Therefore, by a landmark decision the Supreme Court delivered an opinion,

"Equal but separate is not equal."

This opinion was forceful with no loophole left. As a result, it was able to eliminate segregation between the Caucasian and the Negroid Races. We need a similar opinion, now, to eradicate discrimination for ever from the soil of this great nation, the United States of America. This is another compelling reason for the Supreme Court to accept the petitioner's writ of certiori for a hearing.

7. At last but not least, the most compelling reason to outlaw the McDonnell Douglas three-step method is that the number of people who are vulnerable to discrimination by the McDonnell Douglas Framework is much larger than those who are vulnerable to all other crimes combined. Number of

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[1] means a person with a great soul, which in English is a great man

EEOC complaints bears testimony to that and it is increasing every year the arithmetic progression.

THE SOLUTIONS PROPOSED

1. A solution which will be as strong as

Equal but separate is not equal

if it is based on Rule 56 (c) which is, **"The judgment sought shall be rendered forth with," with the implication that** if it could not be rendered forthwith then the case was too complex for a summary judgment adjudication.

2. In all the employment hiring discrimination complaints where a court cannot adjudicate the issue of qualifications as to the best qualified candidate by a judge trial, the court must submit the case to a jury trial.

Or

In all the employment hiring discrimination complaints where a court cannot adjudicate the issue of qualifications as to the best qualified candidate by **a judge trial,** the court must declare those issues **precluded** from summary judgment pursuant to Federal Rules of Civil Procedure 56 (c), as one court did, exh._3_.

3. The above procedure will be very cost effective because in such situations hardly any discovery needed. In medical malpractice suits, a court is not required to evaluate the qualifications of the Physicians and the procedures used by

them. There is a Medical Board to review the qualifications of the physicians and the procedures used by them before a case comes to court. Similarly an Engineering Board should evaluate the qualifications of engineering candidates before the case comes to court.

McDonnell Douglas Framework should be replaced by the following three steps

Step 1. A plaintiff must prove by preponderance of evidence that the selectee was less qualified.

Step 2. A plaintiff must prove that he/she was discriminated.

Step 3. A plaintiff must prove that he/she was unlawfully discriminated against.

BENEFITS

1. Discovery time will be reduced to 10%.

Evidence in a hiring discrimination complaint are:

(a) Advertisement of the position
(b) Applicants' applications
(c) Resumes
(d) Transcripts
(e) Letters of recommendations, if any.

From these evidence the employer is able to gather whether or not facts are there to conclude if or not the plaintiff can

satisfy (i) Quotation 2, or (ii) Quotation 4. On the basis of these and these evidence only a judge can make a decision whether or not a summary judgment may be awarded in favor of the defendant. (The above evidence are direct evidence, No other evidence are needed.). Since these documents are already available, a decision can be made immediately. Thus discovery time will be greatly reduced and judicial cost kept to a minimum.

2. It will bring down number of writs to Supreme Court to 10% from its present value.

Since 90% of the complaints are dismissed by the McDonnell Douglas Method currently, if the method is outlawed, only 10% of the cases will reach the Supreme Court.

3. **Minority Relation will be gradually better**. There will not be any fear in distant future for disintegration like India and USSR.

4 All the above will be achieved without any harm done to any parties.

GIST

1. The courts use 1973 McDonnell Douglas Method to grant summary judgment in favor of the respondent. Accordint to a 1993 U.S.Supreme Court opinion, the 1973 McDonnell Douglas Method is not required by a plaintiff *who* elects to use direct evidence of discrimination.. The method itself did not say that it was to adjudicate a summary judgment motion. Rather it implies that it was intended for the adjudication of the whole discrimination complaint

2. The petitioner has shown that the McDonnell Douglas Method is **also** inapplicable and unlawful to adjudicate a summary judgment motion. The petitioner has proposed a novel & logical method which he claims to be indisputable and flawlessly effective in establishing unlawful discrimination.

3. Of the four top priorities of the United States, Minority Harmony is one. National security assures peace from external threat. Minority Harmony assures peace from internal disturbances.

4. A proposal has also been made to create an Engineering Board, just like the medical Board to evaluate the qualifications of the engineering candidates, because the courts do not possess, should not possess and are not required to possess the necessary expertise to evaluate the qualifications of the engineering candidates.

V. THE PRAYERS

WHEREFORE, this petitioner does not pray for his own good but prays for the good of this country[9] on behalf of the millions of minority who are being discriminated because of the unlawful McDonnell Douglas Framework; and prays that this Hon. Supreme Court outlaw the same. Further he prays that the Honorable Supreme Court adopts the proposed solutions. Lastly this humble plaintiff prays that the Honorable Supreme Court remand the case back to the district court for a just, fair and speedy trial, for justice delayed is justice denied.

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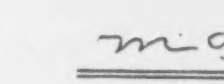
[9] to which he was an immigrant in December 24, 1952.

Respectfully submitted,

 Date: 4-3-99. Ph. 301-528-0241

Abdul Aziz, Ph.D., Petitioner Pro se, 19924 Lake Park Drive, Gemantown, MD 20874-1018. Ph. 301-528-0241

This is the judgment of the apeals court of the sixth Circuit which covers University of Akron.

98-3253

FILED
MAR 12 1999
Leonard Gree, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ABDUL AZIZ
Plaintiff-Appellant,

v.

THE UNIVERSITY OF AKRON
Defendant-Appellee.

Before: SILER, DAUGHTREY, and GILMAN, Circuit Judges.

This pro se Ohio litigant appeals a district court judgement dismissing his complaint filed pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e (Title VII), and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C § 621 (ADEA). This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary damages, after receiving Equal Employment Opportunity Commission right to sue letter, Abdul Aziz sued the University of Akron claiming that the University did not hire him for a teaching position: 1) because of his age, in violation of the ADEA; 2) because of his race,

in violation of the Title VII; and 3) because of his national origin, in violation of Title VII.

The district court granted the defendant's motion for summary judgement and dismissed the complaint. Aziz appeals that judgement.

This court reviews de novo a district court's grant of summary judgement. *See Pinney Dock & Transp. Co. v. Penn Cent. Corp.*, 838 F.2d 1445, 1472 (6th Cir.), *cert. denied*, 488 U.S. 880 (1988). Summary judgement is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgement as a matter of law. Fed. R. Civ. P. 56(c); Avery v. King, 110 F.3d 12, 13-14 (6th Cir. 1997). The moving party is entitled to judgement as a matter of law where, after adequate time for discovery, the nonmoving party fails to establish the existence of an element essential to its case and on which that party would bear the burden at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

Where, as here, the plaintiff fails to present direct evidence of discrimination, the courts analyze ADEA cases under the three-step *McDonnell Douglas* framework. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 802 (1973); *Kline v. Tennessee Valley Auth.*, 128 F.3d 337, 342-43 (6th Cir. 1997)l *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F.3d 1078 1081 (6th Cir. 1994). Initially, the plaintiff must present evidence sufficient to establish a prima facie case of age discrimination. *See Barnhart v. Pickrel, Schaeffer & Eberling Co.*, L.P.A., 12 F.3d 1382, 1389 (6th Cir. 1993). Under the *McDonnell Douglas* framework, a plaintiff first must establish a prima facie case by showing that: 1) he was at least 40 years old at the time of the alleged discrimination; 2) he was subjected to an adverse employment action; 3) he was otherwise qualified for the position; and 4) the successful applicant was substantially

younger than the plaintiff. *See Barnett v. Department of Veterans Affairs*, 153 F.3d 338, 341 (6th Cir 1998), *petition for cert. filed*, (Nov. 25 1998) (No. 98-922). If the plaintiff establishes a prima facie case, the burden of production them shifts to the defendant to produce evidence of a nondiscriminatory reason for its action. *See id.* If the defendant can come forth with such a reason, the burden returns to the plaintiff to demonstrate that the defendant's proffered reason is pretextual. See id.

Similarly, in order to prevail under Title VII, Aziz must first establish a prima facie case of discrimination, which requires that he prove that: 1) he is a member of a protected class; 2) an adverse employment decision was made against him; 3) he was otherwise qualified for the position from which the adverse decision arose; and 4) the successful applicant was not a person of his protected class. *See Ensley-Gaines v. Runyon*, 100 F.3d 122, 1224 (6th Cir. 1996); *cf. Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253 n.6 (1981); *McDonnell Douglas*, 411 U.S. at 802. Once the prima facie elements have been establish, the defendant must produce evidence that a legitimate nondiscriminatory reason motivated the employment action.McDonnell Douglas, 411 U.S. at 802. The burden of production then returns to the plaintiff to demonstrate that the reason proffered by the defendant was pretextual. *See Texas Dep't of Community Affairs*, 450 U.S at 252-53; *Goostree v. Tennessee*, 796 F.2d 854, 861-63 (6th Cir. 1986), *cert. denied*, 480 U.S. 918 (1987).

Upon review, we conclude that even if Aziz had established a prima facie case of discrimination on any or all his three theories, the University met its burden of showing legitimate, non-discriminatory reasons for not hiring him. The University convened a search committee which established numerical values for professional qualifications that it deemed

necessary and preferable. The committee reviewed the resumes of fifty-six applicants, assigned points according to the prescribed criteria, and interviewed the top thirteen applicants by phone. Aziz was one of the applicants interviewed by phone, but he was not among the five finalists offered on-campus interview because the search committee had concerns about errors in his cover letter, frequent job changes, the lack of dates in his resume which indicated lapses between jobs, and the lack of any recent industrial experience.

The search committee deemed Aziz's lack of any industrial or teaching experience for the previous five years particularly detrimental. An employer may legitimately consider recent experience as a major factor in evaluating candidates. *See Shipkovitz v. Board of Trustees of Univ. of District of Columbia,* 914 F. Supp. 1, 3 (D.D.C. 1996), aff'd 124 F.3d 1309 (D.C. Cir 1997). In addition, Aziz did not possess a professional engineer's license. An employer is entitled to establish its own preferred qualifications. *See Hassan v. Auburn University,* 833 F. Supp. 866, 872 (M.D. Ala. 1993), aff'd 15 F.3d 1097 (11th Cir. 1994). Thus, the University met its burden of showing that it did not hire Aziz because that he was less qualified than five finalists, or the successful candidate. No discrimination exists where an employer chooses a candidate it believes is more suitable to its needs. *See Texas Dep't of Community Affairs,* 450 U.S at 259. Interestingly, Aziz admitted in his deposition that the University did not even know his race, national origin or age at the time he was eliminated from the hiring process.

In light of the forgoing evidence, Aziz was required, yet failed, to produce significant probative evidence showing that the reasons proffered by the University for not hiring him were pretextual. *See id.* at 252-53. Thus, he failed to establish the existence of an element essential to his case on which he would bear the burden at trial, *see Celotex Corp. v. Catrett,*

477 U.S. at 322-23, and summary judgement was properly granted to the defendant.

Accordingly, the district court's judgement is hereby affirmed pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Sd/- Leonard Green
Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ABDUL AZIZ	)	CASE NO. 5:97 CV 1907
PLAINTIFF	)	JUDGE PETER ECONOMUS
	)	
v.	)	MEMORANDUM OPINION
	)	AND ORDER
	)	
THE UNIVERSITY	)	
OF AKRON	)	
	)	
DEFENDANT	)	

1. This matter is before the Court upon Defendant's Motion for Summary Judgement (Dkt. #19). For the reasons set forth below, the Court finds Defendant's motion to be meritorious.

2. Plaintiff's Complaint states trhree claims for relief based on Plaintiff's unsuccessful application for a teaching position at the University of Akron in August, 1996: age discrimination in violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et. Seq. (the "ADEA"), and race and national origin discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e, et. Seq. ("Title VII").

3. In 1996, Defendant began the selection process for the position of Assistant Professor of Mechanical Engineering Technology. As part of the search, Defendant executed a plan to ensure a diverse applicant pool for the position and a fair evaluation of that pool.

4. Before the search committee selected thirteen semi-finalists, it met and decided the appropriate weight of hiring criteria, including minimum preferred qualifications for the position. To facilitate its evaluation of the applications, the committee used a form which incorporated assigned weights to the preferred qualifications. When the applicants forwarded their resumes in response to the advertisement, they were asked to complete an application form on which the applicants were to list, inter alia, their teaching and industrial experience for the past five years. Each committee member then reviewed the completed application forms and used them to assign points to each applicant.

5. Plaintiff received a telephone interview and acknowledged that no discriminatory statements were made nor was any discriminatory information elicited during this interview.

6. After his telephone interview, Plaintiff was not included in the on-campus interviews and eliminated from the process because members of the search committee had concerns about errors in Plaintiff's cover letter. Plaintiff's frequent job changes, the lack of dates in his resume which suggested he may be hiding lapses between jobs, and the fact that Plaintiff did not have recent industrial experience. Furthermore, Plaintiff's application revealed that he had no industrial or teaching experience for the previous five years, and that he lacked the professional engineer's license. Because of these considerations, Plaintiff received a low ranking.

7. According to the Defendant, Plaintiff's industrial and teaching experience was stale and his resume revealed that he had trouble maintaining long-term employment. Plaintiff's age, race, and national origin did not factor into Defendant's hiring decision.

Fed. R. Civ. P. 56(c) governs summary judgement and provides in pertinent part:

The judgement sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving part is entitled to a judgement as a matter of law.

8. The party moving for summary judgement bears the burden of showing the absence of a genuine issue as to any material fact, and for these purposes, the evidence submitted must be viewed in the light most favorable to the non-moving party to determine whether a genuine issue of material fact exists. Adickęs v. S.H. Kress & Co., 398 U.S. 144 (1970).

9. "The burden on the moving party may be discharged if the moving party demonstrates that the non-moving party has failed to establish an essential element of his or her case for which he or she bears the ultimate burden of proof at trial." Morales v. American Honda motor Co. Inc., 71 f.3d 531, 535 (1995). If the moving party meets this burden then the non-moving party must present additional evidence beyond the pleadings. Id. The non-moving party must present more than a scintilla of evidence I support of his or her position. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Summary judgement must be granted unless there is sufficient evidence favoring the non-moving party for a judge or jury to return a verdict for that party. Id at 249.

10. Lacking the direct evidence of discrimination based on his protected characteristics, Plaintiff bears the burden of establishing a prima facie case under the McDonnell Douglas paradigm. Thus, for his failure to hire claims to survive

summary judgement, Plaintiff must establish all of the following elements of a prima facie case of discrimination:

1. that he belonged to a protected class;
2. that he applied for and was considered for a position for which he was qualified;
3. that he was not hired; and
4. that another person who was not a member of his protected class was given the position.

Creech v. Ohio Cas. Ins. Co., 944 F.Supp. 1347 (S.D.Ohio 1996) citing Brown v. Tennessee. 693 F.2d 600, 603 (6th Cir. 1982).

Furthermore,

Merely making our a prima facie case does not automatically save [plaintiff] from a summary judgement motion. "Indeed, the inference of discrimination created by the prima facie case is dispelled once the employer's [legitimate, nondiscriminatory] reason is stated, until and unless the latter is shown to be a pretext."

Gagne v. Northwestern Nat. Ins. Co., 881 F.2d 309, 314 (6th Cir. 1989) quoting Menard v. First Security Serv. Corp., 848 F.2d 281, 287 (1st Cir. 1988).

11. Assuming arguendo, that Plaintiff is able to establish a prima facie case of discrimination on any or all of his three theories, his claims cannot withstand summary judgement. Defendant set forth a legitimate, nondiscriminatory reason for not hiring Plaintiff. Defendant simply selected a candidate it believed was more qualified and better able to meet its current needs. Regardless of Plaintiff's membership in any protected class, no discrimination exists where the employer

chooses the candidate it believes is more suitable to its needs. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 259, 101 S.Ct. 1089, 1097, 67 L.Ed.2d 207 (1981).
12. While Plaintiff may disagree with the relative weight Defendant gave the stated qualifications or even how Defendant defines its preferred qualifications, such a disagreement is not a legitimate basis for a discrimination claim. Even if Plaintiff feels Defendant made a mistake, Defendant is entitled to base its employment decision on "a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, so long as it is not a discriminatory reason." Brown v. American Honda Motor Co., 939 F.2d 946,951 (11th Cir. 1991).

13. In this case, Defendant afforded greater weight to the timing of the candidates' experience. An employer may legitimately consider recent experience as a major factor in evaluating candidates. Shipkovitz v. Bd. Of Trustees of Univ. Of Dist. Col., 914 F.Supp. 1, 3 (D.D.C. 1996), aff'd 125 F.3d 1309 (D.C. Cir. 1997). Furthermore, Defendant determined that the candidate they chose was more qualified than Plaintiff in part because he was a licenses professional engineer, one of the advertised "preferred" qualifications and his resume did not reflect the employment instability. These considerations, and the others utilized by Defendant in maing its hiring decision, are obviously both nondiscriminatory and legitimate business decisions. See Matthews v. Kilroy, 117 F.3d 1420, 1907 WL377013 **4 (6th Cir. 1997)l see also Cesaro v. Lakeville Community School District, 953 F.2d, 252, 255 (6th Cir. 1991).

14. Defendant has met its burden of production by articulating a legitimate nondiscriminatory reason for not selecting Plaintiff for the position. According to the McDonnell Douglas framework, Plaintiff bears the burden of

persuasion to show there is a genuine issue as to whether or not the reasons proffered by Defendant are pretextual. However, Plaintiff has not produced any evidence of pretext.

15. Based on Defendant's legitimate nondiscriminatory reasons for not hiring Plaintiff and the absence of any evidence indicating that the articulated reasons are pretextual. Defendant's motion for Summary Judgement (Dkt. #19) is GRANTED

IT IS SO ORDERED.

_____

PETER C. ECONOMUS

UNITED STATES DISTRICT JUDGE

saint martin's college

5300 Pacific Avenue S.E Lacey, Washington 98505-1297
Telephone (206) 491-4700. FAX 206)459-4124

March 24, 1995

Adul Aziz, Ph.D.
922 Edmonston Road
Greenbelt, MD 20770-1504

Dear Dr. Aziz:

Thank you for your interest in the Assistant/Associate Professor of Mechanical Engineering position at Saint Martin's College.

To date, we have received the following materials:

/ x / Application Letter / x / Resume

/ x / Transcripts / x / 3 Letters of recommendations

Your file is complete and eligible for review. A description for the position is enclosed for your information. Applicants will be notified for interviews approximately one to two weeks after the position closes.

Again thank you for your interest in teaching at Saint Martin's.

Sincerely yours,

Richard Langhill, Ph. D.
Vice President for Academic Affairs

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ABDUL AZIZ

VS. NO. LR-C-96-843

UNIVERSITY OF ARKANSAS
AT LITTLE ROCK
DEFENDANT

ORDER

Pending before the Court is plaintiff's pro se motion for Summary Judgement in the above styled case. Plaintiff's complaint alleges that he was not hired for a faculty position at the University of Arkansas at Little Rock (UALR) in violation of the Age Discrimination in Employment Act (ADEA), and in violation of Title VII based on race and national origin.

In his motion for Summary Judgement, plaintiff asks the Court to hold that a less qualified person was selected for the UALR faculty position. Plaintiff's request requires the Court to make a factual decision on a genuine issue of material fact which is precluded pursuant to Federal Rule of Civil Procedure 56.

Plaintiff's Motion for Summary Judgement (#10) is denied.

James M. Moody

United States District Judge